

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT HUNTINGTON**

**OHIO VALLEY ENVIRONMENTAL  
COALITION, INC, WEST VIRGINIA  
HIGHLANDS CONSERVANCY, INC.,  
COAL RIVER MOUNTAIN WATCH,  
INC., and SIERRA CLUB**

**Plaintiffs,**

**v.**

**CIVIL ACTION NO. \_\_\_\_\_**

**INDEPENDENCE COAL COMPANY, INC.,  
and JACKS BRANCH COAL COMPANY,**

**Defendants.**

**DECLARATION OF DIANNE BADY**

I, Dianne Bady, state and affirm as follows:

1. I live in Rome Township near Proctorville, Ohio. Proctorville is, in large part, a bedroom community of Huntington and is just on the other side of the Ohio River from Huntington.

2. I am the founder of Ohio Valley Environmental Coalition (OVEC) and have been a member since 1987. OVEC, with approximately 1,500 members, has a mission to organize and maintain a diverse grassroots organization dedicated to the improvement and preservation of the environment through education, grassroots organizing and coalition building, leadership development, and media outreach.

3. I am a long time member of the West Virginia Highlands Conservancy (WVHC). The WVHC is a nonprofit grassroots membership organization located in West Virginia. Established in 1967, WVHC is one of the state's oldest environmental advocacy organizations and for the past four decades has been a leader in citizen efforts to protect West Virginia's people, land, and water resources from the effects of coal mining. Its headquarters is located in Charleston, West Virginia, and most of its approximately 1,700 members reside in West Virginia.

4. I have been a member of Sierra Club for a few years. Sierra Club is a nonprofit corporation incorporated in California, with more than 600,000 members and supporters nationwide and approximately 1,900 members who reside in West Virginia and belong to its West Virginia Chapter. The Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of the Earth; to practicing and promoting the responsible use of the Earth's resources and ecosystems; to educating and enlisting humanity to protect and restore the quality of the

natural and human environment; and to using all lawful means to carry out these objectives. The Sierra Club's concerns encompass the exploration, enjoyment and protection of surface waters in West Virginia.

5. I have always had a close relationship with nature. It is important for me to be outside and spend time near streams and running water.

6. I am very concerned about water quality here in West Virginia and believe we need to protect our water resources. We also need to protect the communities that rely on West Virginia's rivers and streams for drinking water and recreational uses.

7. I am angered by the impacts of big surface mines on water quality. I think the evidence is clear that the mines harm water quality and threaten the aquatic life and water fowl that need clean streams for survival. This is very upsetting to me.

8. I am also concerned about the threats selenium pollution poses to aquatic life. I know that selenium is a bioaccumulative toxin that works its way up the food chain threatening aquatic life and waterfowl that eat the contaminated food. It especially concerns me to know that a stream can look ok but if selenium levels are high aquatic life can still be harmed.

9. As I understand it, Jacks Branch Coal Company holds NPDES permit WV0093912 which regulates water pollution discharges to Smithers Creek and Hughes Creek of the Kanawha River.

10. I also understand that Jacks Branch Coal Company has been violating the selenium discharge limits in the permit discharging to Smithers Creek and Hughes Creek. The selenium pollution coming from the mine greatly concerns me and decreases my enjoyment of the reaches downstream of the mine. If Jacks Branch Coal Company were to comply with the pollution limits in the permit, I would enjoy the streams more and be less concerned about impacts to the aquatic life and waterfowl living in and near the streams.

11. I first drove by Hughes Creek and Smithers Creek about 25 years ago. I have driven along Route 60 by the mouth of Hughes Creek and of Smithers Creek occasionally since then. In the past 3 to 4 years I have driven by once every month or two. I frequently look at the creeks as I drive by and think about the mining upstream and the threats mining poses to water quality. I intend to continue driving this route in the future.

12. During my drives I have stopped for lunch or coffee near the mouth of Smithers Creek and during those visits have stopped to look at the Kanawha River just downstream of the mouth approximately four to five times. Since I know there is a lot of mining in the headwaters of Smithers Creek I always think about the water quality in this section of stream and I am very concerned about the harm that is being done from pollution including selenium from the mines.

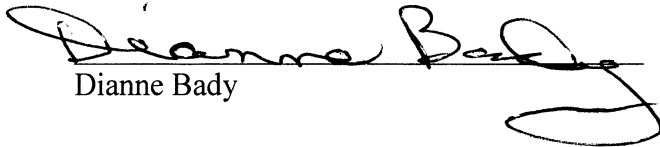
13. Earlier this summer I visited Smithers Creek. We drove up Bullpush Fork and found a pretty bridge over the river. We stood on the bridge for quite awhile and looked at the stream. It was a beautiful place and pleasant place to stop but I was concerned about water quality and the threats selenium poses to aquatic life and waterfowl.

14. I also visited the mainstem of Hughes Creek. We got out of the car and spent time at the creek. It was a lovely area and the sounds of the water were very soothing on a hot day. I also went down to the stream and turned over rocks looking for insects and other aquatic life but I didn't find the abundance of creatures I find in a healthy stream. In fact, I found little if

anything living. This greatly concerned me. I was also concerned about threats to aquatic life from the selenium coming from the mines upstream.

15. I intend to return to Smithers Creek and Hughes Creek in the future and hope Jacks Branch Coal will comply with its permit limits so I can better enjoy the streams.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 30th day of August 2010.

  
Dianne Bady